

DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

☐ Action Date: \_\_\_\_\_  
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DEPARTMENTAL PERSONNEL MANUAL SYSTEM

DPM BULLETIN NO. 534- 1

DATE: JAN - 7 1987

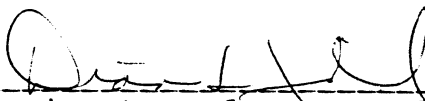
**SUBJECT:** Senior Executive Service Performance  
Award Regulations

Attached for your information are final Office of Personnel Management (OPM) regulations governing Senior Executive Service Performance Awards (bonuses), as published in the January 2, 1987 Federal Register.

The most significant change in the regulations is that prior OPM approval of bonus distribution will no longer be required. Most other restrictions in the regulations are reiterations of what is required by law. OPM still intends to issue guidance on the distribution of bonuses but indicates in the Supplementary Information that such guidance will not be as restrictive as what has been applied for the last several years. When the revised guidance is received, we will begin a comprehensive review of our bonus policy and will be soliciting your input.

Should you have any questions on the final regulations, please contact Richard Cronin on 366-9435.

Attachment

  
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Director of Personnel

**Filing Instructions:** File immediately after FPM Chapter 534 Bulletins

**Bulletin Expires:** Upon Notification

**Distribution:** Personnel Council Members

OPI: M-13/RJCronin/366-9435

# Rules and Regulations

Federal Register

Vol. 52, No. 1

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 534

#### Senior Executive Service Performance Awards

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations to prescribe requirements necessary to implement the amendments made to the Senior Executive Service (SES) performance award provisions of the Civil Service Reform Act of 1978 by the Civil Service Retirement and Spouse Equity Act of 1984 (CSRSEA). The regulations cover the total amount of award payments that may be made by an agency to career appointees of the SES and the minimum and maximum amounts that may be paid to individuals. They also prescribe the procedures under which awards may be made.

**EFFECTIVE DATE:** February 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Neal Harwood, (202) 632-4625.

**SUPPLEMENTARY INFORMATION:** On September 24, 1985, OPM published interim regulations in the *Federal Register* (50 FR 38634) that revised § 534.403 on SES performance awards in Subpart D of Part 534 of Title 5 of the Code of Federal Regulations. The revisions implemented changes in the law made by CSRSEA (Pub. L. 98-615 of November 8, 1984). The comment period ended on November 25, 1985. Comments were received from six agencies.

Section 534.403(a) of the final regulations has been revised to incorporate from 5 U.S.C. 5384 the requirement that to be eligible for a performance award a career appointee must have a "Fully Successful" or higher

rating of record and to cross reference the provisions on SES performance ratings in the new Subpart C of Part 430 (added March 11, 1986, 51 FR 8396). In regard to these provisions, the service to be recognized by an SES performance award should have been performed as an SES career appointee.

No changes were made in § 534.403(b) to the instructions in the interim regulations for calculating the total amount of awards that may be paid in an agency.

Section 534.403(c) on the minimum and maximum amounts for individual awards remain the same as in the interim regulations.

Section 534.403(d) of the interim regulations provided that OPM shall issue guidance concerning the distribution of performance awards within an agency. Two agencies objected to the guidance OPM issued under the interim regulations restricting the total individual awards in an agency to 35 percent of the agency's SES career appointees and providing limits on how many individuals could receive awards at 17 to 20 percent and 12 to 20 percent of base pay. One agency stated that the guidance limited agencies' ability to motivate and reward the executive corps, and the other stated that the guidance should be much more general and advisory in nature.

The authority for OPM to provide distribution guidance is retained in the final regulations to help assure that there is a reasonable distribution of awards within an agency, that award amounts reflect actual executive performance and are not used just as supplements to basic pay, and that larger awards go to the superior performers but not all awards are paid at or near the maximum amounts. We agree with the agency comments, however, that the guidance should not be stated in terms of specific numerical limitations; and OPM will be issuing revised guidance upon publication of the final regulations.

Section 534.403(e) of the interim regulations required that every agency obtain OPM approval before payment of performance awards. All six agencies commenting on the regulations opposed this requirement. They argued that it was unnecessary in view of the parameters established in law and the OPM guidance provided agencies, unduly delayed payment of awards, and

was contrary to the spirit of the Civil Service Reform Act of delegating as much authority to agencies as possible. Four of the agencies recommended that the OPM review be done solely on a post-audit basis and that corrective action be applicable only to subsequent award payments. The other two agencies suggested that the prior approval requirement be imposed only on agencies that want to vary from OPM guidance.

The prior approval requirement in the interim regulations was intended to assure that agencies were in full compliance with the statutory procedures for calculating the award pool and the guidance on distribution of awards. All agencies now have had experience in making payment of performance awards under the provisions of Pub. L. 98-615 and the interim regulations for at least one award cycle, and OPM has had the opportunity to advise agencies on any problems it found in previous proposed payments. In view of these circumstances, and taking into account agency comments, OPM has decided that the prior approval requirement is no longer needed; and the requirement has been deleted from the final regulations.

Even though formal prior approval is no longer required, we strongly encourage agencies to check informally with OPM on the computation of their award pool before payment to assure that the pool complies with statutory and regulatory requirements. We also provide in the regulations that information regarding the distribution of awards, the total amount of awards, and the aggregate payroll or average rate of basic pay used to compute the pool must be provided to OPM no later than 14 days after the date the performance awards are approved to allow for timely post-audit. (Until further notice, we are requesting that agencies provide the requested information in the same format as previously.) The final regulations have been amended to provide that if as part of its audit responsibility OPM determines that statutory or regulatory requirements have not been met, agencies shall comply with any OPM directed corrective action.

A new § 534.403(f) has been added to explain how to apply the statutory provisions that (1) performance awards are to be paid in a lump sum (5 U.S.C.